

1-1 By: Raymond (Senate Sponsor - Rodriguez) H.B. No. 3439
1-2 (In the Senate - Received from the House May 16, 2011;
1-3 May 16, 2011, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2011, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to missing children; providing a criminal penalty.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Article 63.001(3), Code of Criminal Procedure,
1-11 is amended to read as follows:

1-12 (3) "Missing child" means a child whose whereabouts
1-13 are unknown to the child's legal custodian, the circumstances of
1-14 whose absence indicate that:

1-15 (A) the child did not voluntarily leave the care
1-16 and control of the custodian, and the taking of the child was not
1-17 authorized by law;

1-18 (B) the child voluntarily left the care and
1-19 control of the ~~[his legal]~~ custodian without the custodian's
1-20 consent and without intent to return; ~~[or]~~

1-21 (C) the child was taken or retained in violation
1-22 of the terms of a court order for possession of or access to the
1-23 child; or

1-24 (D) the child was taken or retained without the
1-25 permission of the custodian and with the effect of depriving the
1-26 custodian of possession of or access to the child unless the taking
1-27 or retention of the child was prompted by the commission or
1-28 attempted commission of family violence, as defined by Section
1-29 71.004, Family Code, against the child or the actor.

1-30 SECTION 2. Section 25.03, Penal Code, is amended by
1-31 amending Subsection (a) and adding Subsections (c-1) and (c-2) to
1-32 read as follows:

1-33 (a) A person commits an offense if the person takes or
1-34 retains a child younger than 18 years of age ~~[when the person]:~~

1-35 (1) when the person knows that the person's taking or
1-36 retention violates the express terms of a judgment or order,
1-37 including a temporary order, of a court disposing of the child's
1-38 custody; ~~[or]~~

1-39 (2) when the person has not been awarded custody of
1-40 the child by a court of competent jurisdiction, knows that a suit
1-41 for divorce or a civil suit or application for habeas corpus to
1-42 dispose of the child's custody has been filed, and takes the child
1-43 out of the geographic area of the counties composing the judicial
1-44 district if the court is a district court or the county if the court
1-45 is a statutory county court, without the permission of the court and
1-46 with the intent to deprive the court of authority over the child; or

1-47 (3) outside of the United States with the intent to
1-48 deprive a person entitled to possession of or access to the child of
1-49 that possession or access and without the permission of that
1-50 person.

1-51 (c-1) It is an affirmative defense to prosecution under
1-52 Subsection (a)(3) that:

1-53 (1) the taking or retention of the child was pursuant
1-54 to a valid order providing for possession of or access to the child;
1-55 or

1-56 (2) notwithstanding any violation of a valid order
1-57 providing for possession of or access to the child, the actor's
1-58 retention of the child was due only to circumstances beyond the
1-59 actor's control, and the actor promptly provided notice or made
1-60 reasonable attempts to provide notice of those circumstances to the
1-61 other person entitled to possession of or access to the child.

1-62 (c-2) Subsection (a)(3) does not apply if, at the time of
1-63 the offense, the person taking or retaining the child:

1-64 (1) was entitled to possession of or access to the

2-1 child; and
2-2 (2) was fleeing the commission or attempted commission
2-3 of family violence, as defined by Section 71.004, Family Code,
2-4 against the child or the person.

2-5 SECTION 3. The change in law made by this Act in amending
2-6 Article 63.001(3), Code of Criminal Procedure, applies only to the
2-7 report of a missing child made under Chapter 63, Code of Criminal
2-8 Procedure, as amended by this Act, on or after the effective date of
2-9 this Act. The report of a missing child made before the effective
2-10 date of this Act is governed by the law in effect when the report was
2-11 made, and the former law is continued in effect for that purpose.

2-12 SECTION 4. The change in law made by this Act in amending
2-13 Section 25.03, Penal Code, applies only to an offense committed on
2-14 or after the effective date of this Act. An offense committed
2-15 before the effective date of this Act is governed by the law in
2-16 effect on the date the offense was committed, and the former law is
2-17 continued in effect for that purpose. For purposes of this section,
2-18 an offense was committed before the effective date of this Act if
2-19 any element of the offense occurred before that date.

2-20 SECTION 5. This Act takes effect September 1, 2011.

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